



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

June 27, 2003

Ms. Kathryn A. Kusske Floyd
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, D.C. 20006-1101

Re: Finance Docket No. 34305, The Burlington Northern and Santa Fe
Railway Company – Construction and Operation Exemption – in Merced
County, California

Dear Ms. Floyd:

I have received your letter of June 11, 2003 regarding The Burlington Northern and Santa Fe Railway's (BNSF or Applicant) petition for exemption seeking the Board's authority to construct and operate a new rail line in Merced County, California. The proposed 850-foot rail line would connect a Quebecor World, Inc. printing and distribution facility with a BNSF mainline. The Board's Section of Environmental Analysis (SEA) has begun its environmental review of the proposed action.

In your letter, you request a waiver of the preparation of an Environmental Impact Statement (EIS), and SEA's concurrence of the preparation of a preliminary environmental document by your consultant, HDR Engineering, Inc. (HDR). I have addressed your requests separately below.

EIS Waiver Request

Pursuant to 49 CFR 1105.6(d), SEA is granting your request for a waiver of 49 CFR 1105.6(a), which normally provides for the preparation of an EIS for rail line construction proposals. At this time, we believe that the proposed construction and operation are unlikely to have any significant environmental impact, and therefore, preparation of an Environmental Assessment (EA) is the appropriate level of environmental review.

You have provided SEA with preliminary information about the project as well as the level of potential environmental impact that may be associated with the proposed construction and operation. As part of its independent review and verification, staff from SEA and Myra L. Frank & Associates (Myra Frank), the approved independent third-party consultant that has the responsibility of assisting SEA in preparing the environmental analysis and appropriate environmental documents, have also visited the project site and, based on current information,

concluded that there do not appear to be significant environmental issues related to this project. Further, in response to consultation letters, Federal and state agencies have not identified any significant environmental issues with the proposed action.

Based on the information available to date, we believe that the environmental impacts of this project would not be significant and any impacts can most likely be addressed through appropriate mitigation measures. Therefore, an EA is appropriate in this case. We base our determination on the following:

- (1) The rail line is approximately 850 feet long, and land use in the immediate vicinity is industrial and commercial.
- (2) Projected daily traffic levels on the proposed line include only one round trip train that would operate Monday through Saturday. The number of trains on the BNSF mainline would be unchanged.
- (3) Threatened or endangered wildlife or species of special concern have not been identified as inhabiting the project area.
- (4) The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and California Department of Fish and Game have not identified any significant concerns associated with the proposed action. (We note that the California State Historic Preservation Office has requested additional information and has not yet rendered an opinion on potential project impacts.)
- (5) Other Federal and state agencies did not identify any significant issues during the agency consultation process.
- (6) SEA and Myra Frank staff did not identify any significant issues during a recent site visit.

After the EA is prepared, SEA will make the document available for public review and comment. Once the comment period is concluded, SEA will prepare a Post EA discussing the comments received and including any appropriate modifications to its existing analysis or additional analysis. The Post EA will also set forth for the Board SEA's final recommended mitigation measures. The Board will then consider the EA, the public comments, and SEA's Post EA recommendations before making its final decision in this proceeding. Of course, should the EA process disclose unanticipated impacts that are significant, we will require the preparation of an EIS at that time.

Preliminary Environmental Documentation

Your second request pertains to the preparation of a preliminary environmental document by your consultant, HDR.¹ CEQ regulations at 40 CFR 1506.5(b) permit Applicants to prepare EAs. The preliminary environmental document would serve as an administrative draft for SEA, which shall continue to be responsible for determining the appropriate level of environmental review for BNSF's proposed project. SEA would be responsible for reviewing and verifying the information contained in the preliminary environmental document.

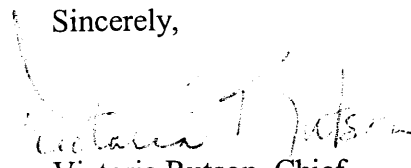
Based on your discussions with Dave Navecky of my staff, and the supporting documentation submitted with your proposal, SEA concurs with your request to have HDR prepare a preliminary environmental document, except the documentation in the area of cultural resources. To be consistent with the EIS waiver discussed above, the preliminary environmental document in this case will be a Preliminary Draft Environmental Assessment (PDEA). SEA, with the assistance of Myra Frank, will verify the information submitted in the PDEA and will independently evaluate the environmental impacts of the proposed project. Myra Frank will also assist SEA in completing the cultural resources assessment and, as outlined in the MOU, assist SEA in preparing the EA for public distribution and comment. Once it has reviewed and verified the information set forth in the PDEA, SEA will complete its preparation of the EA and issue it for public review and comment, as described above.

SEA also concurs with your intent to address in the PDEA, to the extent reasonable and feasible, other environmental areas under the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* (CEQA). We understand that BNSF does not intend to prepare environmental documentation that would independently satisfy CEQA, but rather intends to fold into the PDEA an analysis of CEQA issues.

¹ As discussed above, BNSF has already retained Myra Frank to work as a the third-party consultant under SEA's direction, control, and supervision for preparation of the environmental documentation in connection with the proposed project. SEA, BNSF, and Myra Frank have entered into a Memorandum of Understanding (MOU), which sets forth the roles and responsibilities of each party during the environmental review process conducted in connection with the proposed rail construction and operation. Under 49 CFR 1105.10(d), the requirement for an environmental and historic report is waived when the applicant hires a third-party consultant to assist SEA in the environmental review process.

If you have any questions, please do not hesitate to contact me or Dave Navecky of my staff at 202-565-1593.

Sincerely,

A handwritten signature in dark ink, appearing to read "Victoria Rutson". The signature is written in a cursive, flowing style.

Victoria Rutson, Chief
Section of Environmental Analysis

cc: Gary Peterson, Myra L. Frank & Associates